Calendar No. 550

101ST CONGRESS
2d Session

SENATE

REPORT
101-291

SETTLING ALL CLAIMS OF THE AROOSTOOK BAND OF MICMACS RESULTING FROM THE BAND'S OMISSION FROM THE MAINE INDIAN CLAIMS SETTLEMENT ACT OF 1980, AND FOR OTHER PURPOSES

MAY 15 (legislative day, APRIL 18), 1990.—Ordered to be printed

---

Mr. INOUYE, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 1413]

The Select Committee on Indian Affairs, to which was referred the bill (S. 1413) to settle all claims of the Aroostook Band of Micmacs resulting from the Band's omission from the Maine Indian Claims Settlement Act of 1980, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

AMENDMENTS

The amendments are as follows:

1. On page 4, strike line 3 and insert in lieu thereof the following:

> Band of Micmacs; and
>
> (4) ratify the Micmac Settlement Act, which defines the relationship between the State of Maine and the Aroostook Band of Micmacs.

2. On page 5, at the end of line 14, add a new paragraph (8) as follows:

> (8) The term "Micmac Settlement Act" means the Act entitled "Act to Implement the Aroostook Band of Micmacs Settlement Act" that was enacted by the State of Maine in chapter 148 of the Maine Public Laws of 1989, and all subseqent amendments thereto.

S413-2

3. On page 5, line 15, strike the paragraph designation "(8)" and insert in lieu thereof the paragraph designation "(9)".

4. On page 10, line 14 and 15, strike out the phrase "Maine Implementing Act" and insert in lieu thereof the phrase "Micmac Settlement Act".

5. On page 14, at the end of line 10, add the folowing new sentence:

> The consent of the United States is hereby given to the State of Maine to amend the Micmac Settlement Act for this purpose, provided that such amendment is made with the agreement of the Aroostook Band of Micmacs.

6. On page 16, line 14, after the term "Maine Implementing Act" and before the term "or the Maine Indian Claims Settlement Act of 1980", insert the term", the Micmac Settlement Act,".

PURPOSE

S. 1413 was introduced by Senator Cohen (for himself and Senator Mitchell). A companion bill, H.R. 3049, was introduced in the House of Representatives by Congresswoman Olympia Snowe on behalf of herself and Congressman Brennan. The purpose of the bill is to settle all claims of the Aroostock Band of Micmac Indians resulting from the Band's omission from the Maine Indian Claims Settlement Act of 1980 (P.L. 96-420; 94 Stat. 1785; 25 U.S.C. 1721 et seq., as amended). The bill will extend to the Aroostook Band of Micmac Indians the same compensation, rights and benefits as were provided to the Houlton Band of Maliseet Indians in the Maine Settlement Act. It will authorize the appropriation of a $900,000 settlement funds to be used for land acquisition or economic development purposes, and authorize the Aroostook Bank of Micmacs to organize on the same basis as the Houlton Band of Maliseet Indians.

The entire Maine Congressional delegation supports this legislation. It is also supported by the Attorney General of the State of Maine, the Maine State Legislature, local surrounding communities, and all three recognized tribes in the State of Maine.

BACKGROUND

The Maine Indian Claims Settlement Act of 1980 resolved the claims of the Passamaquoddy and Penobscot Tribes and the Houlton Band of Maliseet Indians to 12.5 million acres of land in the State of Maine (approximately two thirds of the state) at a cost of approximately $84 million. The Act authorized the acquisition of 150,000 acres of land in the State for the Penobscots and 150,000 acres of land for the Passamaquoddys and established a $54,000 million land acquisition fund for that purpose. It also established a $27 million economic development fund for the benefit of the Penobscot and Passamaquoddy Tribes only.

The Houlton Band of Maliseets had not been previously recognized as a discrete Indian tribe by either the United States or the State of Maine. They were, however, represented by counsel and they were recognized to have a potential claim. The State of Maine insisted that their claim, and that of all other Indians to lands

within the state, be extinguished. To accommodate the state's position and not upset the legislation, the Penobscot and Passamaquoddy Tribes agreed to jointly provide $900,000 of their own land acquisition funds to be set aside for the use of the Houlton Band of Maliseet for land acquisition purposes. The Congress refused to extinguish the claims of the Houlton Band of Maliseets unless Federal recognition was extended to the Band. This was done over the grudging acceptance of the state.

Although it was understood that there were some Micmac Indians who resided in the northern part of Maine, the Aroostook Band of Micmac Indians were not represented by counsel at the time and it was assumed that they did not have the same basis as the Maliseets for asserting a claim. The evidence since provided by the Aroostook Band of Micmacs to the Select Committee, including the testimony and evidence provided at the Committee hearing on S. 1413, refutes that assumption.

Only three Indian tribes were specifically named in the Maine Indian Claims Settlement Act: (1) the Penobscots; (2) the Passamaquoddys; and (3) the Houlton Band of Maliseet Indians in Aroostook County, Maine. Prior to the enactment of this Act, the Houlton Band of Maliseet Indians and the Aroostook Band of Micmac Indians formed the Aroostook County Indian Association. While the State of Maine did not recognize either Band as constituting a distinct, organized Indian tribe, they did provide services on the same basis as services where provided to Indians throughout the state. When the Maine Settlement Act was enacted, the state repealed its Indian code and limited all further services only to those tribes specifically recognized in the Settlement Act, i.e., the Penobscots, Passamaquoddys and the Houlton Band of Maliseets.

As a consequence of these actions, any possible claim the Aroostook Band of Indians had to lands within the State of Maine was extinguished, they received no benefits or recompense from the Maine Indian Claims Settlement Act, and they were deprived of any further services from the State. It is the opinion of this Committee that a clear injustice occurred, albeit inadvertent.

The Aroostook Bank of Micmac Indians is located in the far northern county of the State of Maine. The Band currently identifies 482 members, most of whom reside in Aroostook County, Maine within a 20 mile radius of Presque Isle where the tribal headquarters is located. The St. John River separates Aroostook County, Maine from New Brunswick Province in Canada where a larger Band of Micmacs is located. The Canadian Band is recognized by the Government of Canada. While the Canadian Band of Micmacs and the Aroostook Band of Micmacs ae related, they are separate and distinct communities. The Aroostook Band of Micmacs is governed by a nine person council, each of whom serves a two year term. It does not have a tribal constitution; their by-laws are their governing document.

The Aroostook Band of Micmacs has not filed a petition for acknowledgement as an Indian tribe with the Department of the Interior, and they are of the opinion that they may be precluded from doing so because of the 1980 Maine Settlement Act which extinguishes the claims of all Indians in the State of Maine regardless of whether they were specifically named or not. A number of

Micmac Indians previously filed a petition with the Department of the Interior seeking recognition as half-blood Indians under the provisions of the Indian Reorganization Act of 1934 (Act of June 18, 1934, c. 576; 48 Stat. 984; 25 U.S.C. 461 et seq.). The Department has taken no action on this petition and it is understood that the Department has no policies or procedures to govern the handling of such petitions. It is the opinion of this Committee that enactment of S. 1413 will obviate the need for any further consideration of that petition.

RESPONSE TO VIEWS OF THE ADMINISTRATION

In testimony before this Committee, the Department of the Interior disputed the fact that S. 1413 is a settlement of claims and asserted that the primary purpose of the bill was to provide Federal recognition to the Aroostook Band of Micmacs. This analysis was again presented to the Committee in the legislative report of the Executive Branch which is set forth in full in this report. Restricting their views only to that portion of the bill authorizing organization of the Aroostook Band of Micmacs, the Department expressed strong opposition to the bill.

The Committee strongly disagrees with the Department's characterization of this legislation. Indeed, the status of the case might be likened to a condemnation dispute in which title to lands is transferred to the Government immediately upon the filing of a Notice of Taking. The mere fact that title has been transferred does not mean that the party from whom title was taken has no further complaint. That is precisely what happened when the potential claims of the Aroostook Band of Micmac to lands within the State of Maine were extinguished without compensation through enactment of the Maine Indian Claims Settlement Act of 1980.

In addition to the fact that the bill settles any potential claim of the Aroostook Band of Micmacs for the extinguishment of any potential claim to lands or natural resources in the State of Maine, the bill also establishes a Land Acquisition Fund and a Band Tax Fund, it clarifies the tax status of the Band, it clarifies the service population of the tribe and delivery of State and Federal services to the members of the Aroostook Band, it clarifies the application of the Indian Child Welfare Act to members of the Aroostook Band of Micmacs, it provides complex rules to govern the condemnation authority of the State of Maine over any trust lands or natural resources that will be acquired, it ratifies an Act of the State of Maine entitled the Micmac Settlement Act enacted in 1989 which establishes the jurisdictional relationship of the Band to the State of Maine, and it furthers the implementation of the Maine Indian Claims Settlement Act of 1980. None of these objectives could be accomplished if S. 1413 were a simple recognition bill.

HISTORY OF THE MICMAC INDIANS IN THE STATE OF MAINE

The members of the Aroostook Band of Micmacs are descendants from the Micmac Nation whose aboriginal range once encompassed the area from the eastern shores of the Canadian Maritime provinces to southern Maine and even the coast of Massachusetts. Testimony indicates that the Micmac Tribe was included or expressly

made signatory to treaties with the Colony of Massachusetts in 1678, 1693, 1699, 1713, 1717, 1725, 1726, 1727, 1749, and 1752. In July of 1776, the Commonwealth of Massachusetts, which at that time included what is now the State of Maine, formed a specific treaty on behalf of the United Colonies of America with the Micmac and Maliseet Tribes in which the Tribes agreed to support the American revoluntary forces against the British.

By 1792, the Maliseet, Micmac and Passamaquoddy Tribes were in poor circumstances and jointly filed a petition with the Massachusetts General Court for land. In 1794 a treaty was concluded between the Commonwealth of Massachusetts and the Passamaquoddy Tribes and others connected with them. As a part of the Statehood Act of 1820, Maine assumed all duties and obligations of the Commonwealth of Massachusetts towards Indians within the newly formed State.

The history of the Micmac Indians in the State of Maine and the parallel of their history and mutuality of interests with the Maliseet Indians is well summarized by Dr. Harald E. L. Prins of Bowdoin College, Maine. Dr. Prins testimony follows:

STATEMENT OF DR. HAROLD E. L. PRINS, BOWDOIN COLLEGE, IN SUPPORT OF S. 1413, "THE AROOSTOOK BAND OF MICMACS SETTLEMENT ACT"

As Maine's only Native American community without a tribal land base, the Aroostook Band of Micmacs faces major challenges in its quest for cultural survival. Mostly poverty-stricken, the vast majority of the Aroostook Micmacs today make a living as seasonal farm workers, blueberry and potato pickers, day laborers, lumber jacks, and basketmakers. Many live as their migratory ancestors did, in makeshift dwellings erected for more or less temporary reasons in remote and rural locations.

The Micmac Indian community in northern Maine forms part of a larger ethnic group, known as the Mikmaq Nationimou (Micmac Nation). The Micmac range traditionally stretches from Cape Sable (Nova Scotia) in the south, to Cape Breton Island in the east, to Gaspe Peninsula in the north to the St. John River drainage area in the west.

The homeland of the Aroostook Band of Micmacs is situated in Maine on the west bank of the St. John River. More than 400 miles long, this river marks Maine's northeastern boundary with Canada. Local archaeological finds indicate that Indian food-collectors inhabited this region as early as 12,000 years ago. Historical records available indicate that the St. John River drainage area, including northern Maine, fell within the parameters of the traditional Micmac range. This aboriginal range overlapped with that of their Maliseet neighbors. A such, records of their presence in the region reveal an historical pattern of joint-use territoriality. This finding is not only supported by available oral traditions and folklore, but is also corroborated by place names in the area, showing that the names of many local features in the land-scape, rivers,

lakes, and other locations are of Micmac as well as Maliseet origin.

Until the 19th century these vast northern woodlands in the drainage area of the upper St. John remained virtually terra incognita for non-Indians. Indeed, it remained a disputed territory until the Webster-Ashburton Treaty of 1842, when the United States and Great Britain agreed upon the current international boundary slicing through the traditional tribal range of the region's Maliseet and Micmac Indians.

In contrast to Aroostook County, Maine's coastal region and the St. John River, which was a major travel route between the Bay of Fundy and the St. Lawrence River, were exposed to European exploration and settlement and selective documentation since the early 17th century. In my more extensive anthropological report on the Aroostook Band of Micmac Indians, detailed documentary evidence is offered of Micmac historical presence in Maine since the early colonial period. Because Aroostook County is situated in the St. John drainage area, I have included references to Micmac activities in this general region (which includes New Brunswick Province, Canada) in my report.

The ancestors of the Aroostook Micmac made a living as migratory hunters, trappers, fishers and gatherers until the 19th century. Traveling along the myriad of waterways, they moved in birch-bark canoes to transport their families and goods in the ongoing pursuit of subsistence. In the winter, snowshoes and toboggans were used. Birch-bark wigwams functioned well in this mobile way of life, since these makeshift dwellings were easy to dismantle, transport, and erect at another camping ground, where several of these wigwams formed a temporary Micmac encampment.

The traditionally simple social and political structure of the Micmacs was equally flexible and functionally adapted to this migratory mode of subsistence. As such, Micmac political organization generally follows the northeastern Algonquian pattern which is typically based on voluntary association and is characterized by relatively little formal structure. The lines of authority in these kin-groups are usually vague and are based on situational need and consensus among the member families.

Historically, the Micmac form part of an inter-tribal alliance called the Wabanaki Confederacy, established during the 17th century to counter aggressive inroads by enemy tribes and invading Europeans. Joining with the Micmac were their fellow Algonquian-speaking neighbors, the Penobscot, Passamaquoddy, and Maliseet. Between the end of King Philip's War in 1678 and the American Declaration of Independence in 1776, this confederacy of "Eastern Indians" made multiple treaties with the colonial government of Massachusetts, which then possessed jurisdiction over [the Province of] Maine. Indeed, the Micmac tribe was included or expressly made signatory to ten treaties with

Massachusetts (which included the District of Maine at the time) between 1678 and 1752, many of which were negotiated on the coast of Maine.

As members of the Wabanaki Confederacy, the Micmacs became involved in the American Revolutionary war at a very early stage. Indeed, they played an important military role on the northeastern frontier of the United States. When the war began in 1775, the Micmac and their Maliseet allies immediately offered General George Washington their support, promising "to stand together and oppose [those] that are endeavoring to take yours and our lands and Libertys from us."

Just 15 days after the Declaration of Independence had been endosed by the U.S. Continental Congress in 1776, a formal political alliance was established between the newly formed government of the United States of America and the Micmac and Maliseet. At the conclusion of the conference in Watertown, Massachusetts, the Micmac agreed to a friendship treaty with the United States, now generally referred to as the Treaty of Watertown.

After reading the Declaration of Independence, Massachusetts Governor James Bowdoin then proclaimed that the Micmac and Maliseet had become their "Brothers," and declared that "the United States now form a long and strong chain, and it made longer and stronger by our brethern of the [Maliseet] and Micmac Tribes joining with us; and may the Almighty God never suffer this Chain to be broken." As President of the Revolutionary Council, Governor Bowdoin then toasted "and wished that the friendship now established might continue as long as the Sun and Moon shall endure, which was pledged by the Indians."

As tribal allies of the United States, Micmac warriors joined the American revolutionary forces under Colonel John Allan in Machias, eastern Maine, who had been named "Chief Commander of the Eastern Indians." Arriving in their birch-bark canoes, they presented Colonel Allan with "a long string of Wampum declaring the most fervent Zeal for America." With their fellow Wabanaki, Micmac tribes people camped in the woods nearby, and elected their own war leaders, who were then "commissioned, with the pay of lieutenants, and authority to maintain the U.S. stronghold at Passamaquoddy." Colonel Allan paid the Micmac from an account called "Indian Contingencies," which was funded by the United States. In addition, their supplies came from the Machias trading post "at the Charge of the United States."

In November 1783, after the signing of the Treaty of Peace by the United States and Great Britain, Colonel Allan met with tribal representatives of the Micmac and their Wabanaki allies at Passamaquoddy Bay. One of the native war leaders, Nicholas Hawwawes, spoke for the Micmac and Maliseet. Holding a wampum belt, he com-

plained that the new nation was dealing unjustly with its native allies:

> A number of [white] people have come among us whom we don't know and taken our lands and streams. You say it is peace * * * but we don't hear anything is done for us, no mention is made of the Indians in this country. We have been fighting for you and secured for America all the lands on this eastward country to the River St. Croix and always been ready to take up the hatchet when you call. You promised to secure for us our hurting grounds * * * How must we live now, we know nothing but hunting, you white men can live other ways. * * * Brother, the belt we have delivered you is for the great council of America as a token of our love and friendship. We desire that they may look upon us as their brothers, that they will support us in our rights * * *

In 1784, at the request of Massachusetts, which had jurisdiction over Maine until 1820, U.S. Congress abolished its Eastern Indian Department. Two years later, Massachusetts signed a treaty with the Penobscot Indians. In 1790, U.S. Congress enacted the first Non-Intercourse law. With respect to the agreements made with the Micmac and their Wabanaki allies, however, there was still some unfinished business.

Still responsible for the management of Indian affairs in this eastern border territory, Colonel Allan met with Wabanaki representatives from groups "situated on the streams between Penobscot & St. Johns, with such of the Micmac Tribe adjacent." In 1791, they sent a petition to the government of Massachusetts in which they pleaded:

> Since Peace, we have been wandering from place to place. Those spots of ground, which were wont to be our abode, are taken up on the American as British side, and when our Familys attempt to encamp thereon are threaten'd with every insult, so that our women & children are in continual fear—It is to you therefore, we look as our Chiefs * * * It is in this Country we wish to make our home—We ask from you to fulfill those promises made in War * * * We have given no trouble, nor any expense arose on our parts since Peace. We expect you will answer this, with friendship * * *.

The following year, the Micmac and Maliseet petitioned the General Court of Massachusetts again. And in response to that petition, the State appointed an official delegation to meet with the increasingly disaffected Wabanaki tribespeople. They met at Passamaquoddy Bay with 40 Indian representatives, including the "principle characters

of the Mallisheete, Passamaq[uoddy] and Micmac Tribes * * *"

Complaining bitterly about white encroachments of their traditional territories, Micmac and Maliseet tribal chiefs met with Colonel Allan, and lamented:

> That the Promises made in time of War, were not fulfilled particular that of Lands, for improvements and residence, to they had resigned to the United States all Claims within several Haunts, on Condition of enjoying an Equal right with others.

Though Colonel Allan protested that "there is no distinction to be made" between the various Wabanaki groups, the treaty signed in 1794 ultimately affected only the Passamaquoddy Tribe.

In this period, Colonel Allan referred to the continued presence of Micmac families in the woods of eastern Maine:

> On the Schoodick Lakes you will find numbers of Indians from Canada, St. Johns, Penobscot and the Micmac country pursuing their several employments agreeable to the seasons. Some constant residents, and many of them for years not seen on the seacoast, being perpetually on the move. You may pass one day and see only some scattering wigwams, and the next observe Villages.

Clearly, the Micmac and their Wabanaki allies were jointly using this territory. On account of his long-term association with the Indians on America's eastern frontier, Colonel Allan's observations on joint-use territoriality in the region are of great value. In his writings, he noted:

> A correspondence and intercourse have been opened a long time, through the several Tribes * * * and their natural propensity for roving is such that you will see families in the course of a year go through the greatest part of this extent * * * particular as far as Merrimichi and St Francis, so much so that I well know that numbers [of Micmacs and other Wabanakis] which I had in the [Revolutionary] war are now residents in Canada and other distant parts, and many from thence are now living at St. Johns, Penobscot, Passamaquoddy. Thus connected there appears no distinction in the right of the several hunting grounds, for all by some ties or other have an equal claim and are fully domesticated as if natives of the district.

Although Micmac Indians continued to attend the Wabanaki Confederacy meetings throughout the 19th century, which were held regularly at locations in Maine such as

Pleasant Point in the Passamaquoddy Bay area and Indian Island in the Penobscot River, their political power as an inter-tribal alliance diminished in the course of time. When they lost control over their last remaining lands in the course of the 19th century, they were reduced to poverty and many were forced to make a marginal living as seasonal laborers or artisans, in particular as basketmakers.

As noted earlier in this report, the St. Johns River drainage area is situated in the periphery of the traditional Micmac tribal range. As such, Micmac Indians continued to frequent the area. In the early 19th century, for instance, the earliest white settlers moving into the largely uncharterd "wilderness" of northern Maine noted that Micmac and Maliseets "had a roaming permit allowing them free access to the hunting grounds in Aroostook and New Brunswick * * *"

In the early 1900's, wayfaring Micmac families gradually settled down, establishing more or less permanent residences in the various Indian reserves, off-reservation towns, or rural hamlets. In northern Maine, they settled in the string of border towns in Aroostook County hugging the international boundary with Canada where contemporary members of the Aroostook Bank of Micmac still reside. Recounting their transient mode of life, one Aroostook Micmac elder noted: All Indians are nomads, I suppose, and always have been. Indian in older times never stayed in one place either. They followed fishing and hunting to eat. Even today, all our moves are for survival. So, we went back and forth, back and forth for years, following seasonal work opportunities and sometimes just following the crazy whims of fate.

Today, without a tribal subsistence base of their own, most Micmacs in northern Maine occupy a niche at the lowest level of the social order.

In my full report, I present a chronological account which documents Micmac tribal presence in northeastern New England, describes their active participation in the American Revolutionary War, and discuss the genesis of the Aroostook Band of Micmac in northern Maine. Focusing on their political history, I examine the close cultural, linguistic and diplomatic relationship between them and their Penobscot, Passamaquoddy, and Maliseet allies, with whom they formed the Wabanaki Confederacy. This historic inter-tribal alliance was revived at Indian Island, Maine, in 1977 in order to review the common political challenges hurled at them in the modern period.

In conclusion: based on their demonstrated historical ties to the lands in the drainage area of the upper St. Johns River, their close relationship with Maine's other tribal communities, their participation in numerous treaty negotiations between the Wabanaki allies and the Massachusetts government since the 17th century, their 1776 Friendship Treaty with the U.S. and their subsequent military support in eastern Maine during the American Revo-

lution, as well as their continued presence as a native community in northern Maine, I conclude that the position of the Aroostook Band of Micmacs appears fundamentally the same as that of the Houlton Band of Maliseet, which gained federal recognition of its tribal status as a result of the comprehensive Maine Indian Claims Settlement Act of 1980.

It is remarkable that the Aroostook Band of Micmac Indians, as a long disenfranchised and landless native group, has not withered away over the centuries. To the contrary, this community in northern Maine has demonstrated an undaunted collective will toward cultural survival.

DEMOGRAPHICS

Nearly three-fourths of the adult members of the Aroostook Band of Micmacs live in Maine in a corridor along the international boundary of the west bank of the St. Johns River, from Houlton on the south to Van Buren on the north, a distance of 79 miles. Presque Isle is the approximate center of the corridor and has sixty adults residing within the community. Twelve miles to the north is the town of Caribou where the largest concentration of tribal members live, seventy-five adults. The third concentration is in the City of Houlton and numbers forty-three.

The total for the three settlements is 178, or 37 percent of the total number of adults. Interspersed between these three concentrations are a number of small communities which contain another 32 percent of the adults of the tribe. Thus two-thirds of the tribal members live in close proximity to each other.

Within the Aroostook Band of Micmacs, a majority of the membership can speak or understand the Micmac language enough to "get by". In 1983 more than 54 percent of the membership still spoke Micmac. Most of the families in the tribe belong to one of seven consanguineally related kin-groups. A review of the ancestry charts and personal records of the 482 persons carried on the rolls as members of the Aroostook Band of Micmacs indicates that over two-thirds (67 percent) of the adults and over 56 percent of the total population are at least "half-blood" Indians under the standards of the Indian Reorganization Act of 1934 (25 U.S.C. 461 et seq.).

LEGISLATIVE HISTORY

S. 1413 was introduced by Senator Cohen (for himself and Senator Mitchell) on July 26, 1989, and was referred to the Select Committee on Indian Affairs for consideration. A hearing was held on this bill by the Committee on March 28, 1990. On May 1, 1990, in an open business session of the Committee S. 1413, as amended, was ordered reported with a recommendation that the bill, as amended, do pass.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On May 1, 1990, the Select Committee on Indian Affairs, in an open business session, considered S. 1413 and the bill was ordered

reported with amendments with a recommendation that the bill, as amended, be passed.

SECTION-BY-SECTION ANALYSIS

Section 1. This section provides that the Act may be cited as the "Aroostook Band of Micmacs Settlement Act".

Section 2. Subsection (a) of this section sets forth certain Congressional Findings relating to the history of the Aroostook Band of Micmac Indians and historical Findings relating to the enactment of the Maine Indian Claims Settlement Act of 1980, including the fact that any claims to land the Aroostook Band of Micmac Indians may have had within the State of Maine were extinguished by enactment of that Act, and that had Congress been fully informed of the status of the Aroostook Band of Micmac Indians at the time of enactment of the Maine Indian Claims Settlement Act, the Aroostook Band of Micmac Indians would have been accorded the same treatment under the Act as was accorded the Houlton Band of Maliseets.

Subsection (b) of this section states the Purpose of the Act which is to provide Federal recognition and services to the Aroostook Band of Micmac Indians on the same basis as was provided for the Houlton Band of Maliseet Indians, to place $900,000.00 in a land acquisition fund and property tax fund for the future use of the Aroostook Band of Micmacs, and to ratify the Micmac Settlement Act enacted by the State of Maine in 1989.

Section 3. This section sets forth certain definitions of terms used in the Act.

Section 4(a). Subsection (a) of section 4 provides for the establishment of a Land Acquisition Fund for the Aroostook Band of Micmacs in the Treasury of the United States in the amount of $900,000.00.

(b) Subsection (b) of section 4 provides for the establishment in the Treasury of the United States of a Band Tax Fund in the amount of 50,000.00, to be funded only from income accrued on the $900,000.00 Land Acquisition Fund. Principle and income from this Fund may only be used for payment of valid claims for taxes, payments in lieu of taxes, and fees, together with any interest and penalties thereon, for which the Band is determined to be liable, are not subject to further administrative review, and which are certified by the Commissioner of Finance of the State of Maine as valid claims under the terms of this Act.

(c) Subsection (c) of section 4 provides that if the Band is liable to the State of Maine or any local government or political subdivision of the State and there are insufficient funds in the Band Tax Fund to pay such obligation, then the deficiency shall be paid by the Band only from income producing property owned by the Band which is not held in trust for the Band by the United States. The purpose of this section is to shield any trust property acquired by and for the Band, including income derived therefrom, from any tax liability that might be incurred by the Band.

(d) Subsection (d) of section 4 provides for the establishment of a procedure to be followed by the United States, the State of Maine and the Band for the payment of funds out of the Band Tax Fund.

Section 5(a). Subsection (a) of section 5 authorizes the Secretary of the Interior, upon request of the Band, to expend funds from the Land Acquisition Fund for the purposes of acquiring land or natural resources for the Band and for no other purposes. Land or natural resources acquired within the State of Maine from funds expended under the authority of this subsection shall be held in trust by the United States for the benefit of the Band.

(b) Subsection (b) of section 5 establishes protections of lands or natural resources acquired from expenditures under the Land Acquisition Fund which are held in trust, and sets forth use rights of the Band in those lands or natural resources under general provisions of Federal Indian law cited in this subsection. Land or natural resources acquired with funds expended from the Land Acquisition Fund which are held in trust for the Band may only be alienated by a taking for public purposes pursuant to the laws of the State of Maine; a taking for public use pursuant to the laws of the United States; or a transfer made pursuant to an Act of Congress. Individual use assignments of land or natural resources may be transferred from one Band member to another, and specific Federal laws governing lease, sale, exchange, and rights-of-way are referenced.

(c) Subsection (c) of section 5 provides for adoption of a process to govern the terms upon which the State of Maine or any of its political subdivisions may condemn for public purposes any of the lands or natural resources acquired for the Aroostook Band of Micmac Indians under the terms of subsection (a) of this section.

(d) Subsection (d) of section 5 establishes certain conditions precedent which must be fulfilled by the Secretary of the Interior prior to acquiring lands or natural resources for the Band from the Land Acquisition Fund, and certain limitations on reacquisition of lands or natural resources from funds that may be derived from condemnation of trust lands or natural resources acquired for the Band under the Land Acquisition Fund. It also provides for initial jurisdiction over condemnation proceedings brought by the State of Maine or a political subdivision under this section, and provides that land or natural resources acquired by the Secretary of the Interior in trust for the Band shall be managed and administered in accordance with terms established by the Band and agreed to by the Secretary in accordance with section 102 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f) or other applicable law.

Section 6. This section contains provisions relevant to Federal recognition of the Aroostook Band of Micmac Indians; application of Federal law to the Band, its members and its lands; eligibility of the Band and its members to Federal services; and authority of the Band and the State of Maine to enter into agreements regarding the jurisdiction of the State over lands owned by or held in trust for the benefit of the Band or its members.

Subsection (a) of section 6 provides that Federal recognition is extended to the Aroostook Band of Micmacs, and provides further that the Band shall be eligible to receive all financial benefits which the United States provides to Indians and Indian tribes to the same extent as generally applicable to other Federally recognized Indians and Indian tribes.

Subsection (b) of section 6 provides that the Aroostook Band of Micmac Indians and its lands shall have the same status as other tribes and their lands accorded Federal recognition under the terms of the Maine Indian Claims Settlement Act of 1980.

Subsection (c) provides that notwithstanding any other provision of law authorizing the provision of special programs and services by the United States because of their status as Indians, any member of the Band in Aroostook County Maine shall be eligible for such services without regard to the existence of a reservation or the residence of members of the Band on or near a reservation.

It is the intent of this subsection that all persons who are members of the Aroostook Band of Micmacs shall be eligible for all Federal programs of benefit to members of Federally recognized Indian tribes on or near an Indian reservation on the same basis as members of the Houlton Band of Maliseets.

Subsection (d) authorizes the State of Maine and the Aroostook Band of Micmac Indians to execute agreements regarding the jurisdiction of the State of Maine over lands owned by, or held in trust for the benefit of the Band or any member of the Band, and authorizes the State, with the agreement of the Band, to amend the Micmac Settlement Act in the future to implement such agreements.

Section 7. Subsection (a) of section 7 authorizes the Aroostook Band of Micmac Indians to organize for its common welfare and adopt an appropriate instrument in writing to govern the affairs of the Band when acting in its governmental capacity. Subsection (b) provides that for purposes of benefits, only persons who are citizens of the United States may be considered members of the Band except persons who, as of the date of enactment of this Act, are enrolled members on the Band's existing membership roll, and direct lineal descendants of such members.

Section 8. This section provides that the Band is an "Indian tribe" within the meaning of section 4(8) of the Indian Child Welfare Act of 1978, except that nothing in this section shall alter or affect the jurisdiction of the State of Maine over child welfare matters as provided by the Maine Indian Claims Settlement Act of 1980. It is the intent of this section that the Aroostook Band of Micmac Indians shall have the same standing, and its members shall be entitled to the same rights, as are accorded the Houlton Band of Maliseet Indians and its members in the court of the State of Maine under the Maine Indian Claims Settlement Act of 1980.

Section 9. Subsection (a) of section 9 provides that no payments made for the benefit of the Band pursuant to this Act shall be considered by any Federal agency or department in determining or computing the eligibility of the State of Maine for participation in any financial aid program of the United States. Subsection (b) of section 9 provides that the eligibility of the Band or its members for payments or receipts from the State of Maine shall not be considered by the Band or any of its members under any Federal financial aid program. To the extent that eligibility for benefits of any Federal financial aid program is dependent upon a showing of need by the applicant, the administering agency shall not be barred by this subsection from considering the actual financial situation of the applicant.

Section 10. This section authorizes appropriation of $900,000 for fiscal year 1990 for transfer to the Aroostook Band of Micmac Indians Land Acquisition Fund.

Section 11. This section provides rules of construction in the event of a conflict of interpretation between the provisions of the Maine Implementing Act, the Micmac Settlement Act, or the Maine Indian Claims Settlement Act of 1980 and this Act.

Section 12. This section provides that nothing in this Act may be construed to confer jurisdiction to sue, or to grant implied consent to the Band to sue, the United States or any of its officers with respect to the claims extinguished by the Maine Indian Claims Settlement Act of 1980.

COST AND BUDGETARY CONSIDERATIONS

The cost and budgetary impact of S. 1413, as evaluated by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 9, 1990.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1413, the Aroostook Band of Micmacs Settlement Act, as ordered reported by the Senate Select Committee on Indian Affairs on May 1, 1990.

S. 1413 would grant federal recognition to the Aroostook Band of Micmacs, making all members of the tribe eligible for federal benefits and services. No funds are specifically authorized for this purpose; however, relevant federal agencies would be required to include members of the tribe among those eligible for benefits and may seek additional funds in order to provide such benefits. CBO estimates that the average annual cost of services and benefits provided nationally is about $3,000 per eligible Indian. If this average is applicable to the Micmac Tribe, the annual cost would be about $1 million.

The bill would also authorize the appropriation of $900,000 for a land acquisition fund and a property tax fund to enable the tribe to acquire land and natural resources and to compensate state and local governments for any resulting tax impact. Assuming appropriation of the authorized amount, this would result in budget authority and outlays of $900,000 in fiscal year 1990.

Other provisions of the bill would establish rules for determining membership in the tribe, and ratify the Micmac Settlement Act, a Maine act that regulates the relationship between the state and the tribe. CBO estimates that these provisions would result in no cost to the federal government or to state and local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Marta Morgan, who can be reached at 226-2860.

Sincerely,

ROBERT F. HALE
(For Robert D. Reischauer, Director).

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 1413 will have no regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The legislative report on S. 1413 provided to the Select Committee on Indian Affairs by the Department of the Interior is set forth below:

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, April 30, 1990.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is to provide you with our views on S. 1413, the "Aroostock Band of Micmac Claims Settlement Act".

We strongly oppose the enactment of S. 1413.

The stated purposes of the bill are to (1) provide Federal recognition of the Aroostook Band of Micmacs (Band); (2) provide to the members of the Band the services which the United States provides to Indians because of their status as Indians; and (3) place $900,000 in a land acquisition fund and property tax fund for the future use of the Band. Our comments are limited to Federal recognition, which is the primary purpose of the bill.

The Band submitted a letter in 1985 indicating their intent to file a documented petition for Federal acknowledgment through the administrative acknowledgment process provided in 25 CFR 83. The administrative process provides uniform standard based on a systematic and detailed examination of evidence. The Bureau is still awaiting their fully documented petition. Thus, the group has not demonstrated that it meets the seven mandatory criteria required for Federal acknowledgment. We are not aware of any statutory prohibition preventing acknowledgment of the Micmacs through the administrative process.

It has been our policy to oppose legislation which would provide Federal recognition through the Congress. The Band should go through the Federal acknowledgment process established in 1978. Our acknowledgment criteria are fair and the acknowledgment process established in 1978 provides each petitioning group the opportunity for an unbiased, detailed evaluation of their documented petition for acknowledgment. However, S. 1413 would circumvent the standard recognition process that all other similarly situated groups are required to complete. This would be unfair to the other groups seeking recognition and further weaken the administrative process which was established with the support of Congress. This process was designed specifically to eliminate the need for ad hoc determinations through legislation.

The Band seeks recognition on the basis that their situation is similar to that of the Houlton Band of Maliseet. However, in the

case of the Houlton Band of Maliseet, there was significant evidence that this group had functioned historically as a social and political community, and we concluded that there appeared to be a reasonable possibility that with additional research the Houlton Band could make an acceptable argument for recognition under the current regulations. There was no question that parts of the Aroostook County where the Houlton Band resided had been traditional Maliseet territory since at least the 18th century, and there was evidence that some members of the Band were descendants of members of the historical group of Maliseets utilizing the Maine area as early as 1800. The Band have not proven that their situation is similar to the Houlton Band of Maliseets.

Most scholarly sources indicate that the Micmacs' aboriginal territory was based in the maritme provinces of Canada and did not extend southward far enough to encompass the United States, and in particular northern Maine. Although the Band claims historical presence and aboriginal use of lands in Maine by the Micmacs because of their participation in the Wabanaki confederacy along with the Penobscot, Passamaquoddy and Maliseets, the information they have provided to the Department to date is not adequate to substantiate this claim.

The Canadian Micmacs participated in the Wabanaki Confederacy during the mid-1700's to the mid-1800's. However, the Micmacs' participation in the confederacy does not mean that Micmac Indians migrating to the State of Maine as late as the 1890's and their descendants presently residing in Aroostook County meet the requirements for Federal recognition as an American Indian tribe with a perpetual government-to-government relationship with the United States. A brief review of a membership roll submitted in connection with their petition for status as a half-blood community shows that thirty-nine percent (39%) of the 157 names submitted have Canadian citizenship. This clearly indicates the strong ties to the aboriginal territory in Canada where many of the Micmacs reside today.

Inherent in any definition of an Indian tribe is a requirement that the group demonstrates that it has existed as a community within which tribal political relations have been maintained. The Band has not provided the information to show that they form a political entity today or that they functioned historically as a social and political community. Thus, we do not have the necessary information to determine whether this group of individuals either historically or currently has functioned as a political entity, or whether they are more characteristic of scattered descendants.

It should be noted that the bill does not provide for the settlement of claims as the bill title suggests. Therefore, the bill title is misleading.

For the above reasons we cannot support the provisions in S. 1413 which would provide Federal recognition of the Aroostook Band of Micmacs, and therefore we cannot support the other provisions of the bill.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

EDDIE F. BROWN,
Assistant Secretary.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that enactment of S. 1413 will not result in any changes in existing law.

○